

COUNTY OF KAUAI
Minutes of Meeting
Open Session

Board/Committee:	LIQUOR CONTROL COMMISSION	Meeting Date	June 1, 2017
Location	Mo'ikeha Building, Meeting Room #3	Start of Meeting: 4:00 p.m.	End of Meeting: 4:47 p.m.
Present	Chair Jean Iida; Vice Chair William Gibson; Members: Shirley Akita, Maryanne Kusaka, Gerald Matsunaga, and Gary Pacheco Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; Deputy County Attorney Nicholas Courson		
Excused	Paul Endo		
Absent			



SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Iida called the meeting to order at 4:00 p.m. with 6 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 6 members were present.	
Approval of the Agenda		Mr. Matsunaga moved to approve the agenda. Mr. Pacheco seconded the motion. Motion carried 6:0.
Continuance of Public Hearing	<p><u>HANALEI BREAD COMPANY</u>: The hearing for Application No. 2017-087 filed on January 12, 2017 by Hanalei Bread Company LLC dba Hanalei Bread Company for a Restaurant Beer & Wine (no live music, no dancing) license located at 55161 Kūhi'ō Highway, Hanalei, Kauai, Hawaii was opened on May 18, 2017 and continued to June 1, 2017 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu'e Civic Center, Mo'ikeha Building, 4444 Rice Street, Līhu'e, Kauai, Hawaii.</p> <p>Mr. Jim Moffatt, owner, was present. In response to the Commission's questions, Mr. Moffatt explained that he will primarily be serving breakfast and lunch, and may provide European bakery style food service in the</p>	

	<p>evenings to complement some of the organic wines they plan to serve.</p> <p>The public hearing was closed.</p>	<p>Ms. Akita moved to approve Application No. 2017-087. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
	<p>Director Rapozo requested that the Commission come back to Hearing Agenda item 2. Violation Hearing after the Regular Agenda.</p>	
Approval of the Minutes	<p><u>APPROVAL OF THE MINUTES OF MAY 18, 2017</u></p>	<p>Mr. Gibson moved to approve minutes of May 18, 2017. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
	<p>1. <u>DIRECTOR'S REPORT:</u></p> <p>a) <u>INVESTIGATORS' REPORTS</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u> (1) Disturbance Report from Troy's</p> <p>c) <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers – See Attachment</p> <p>d) <u>ACTIONS OF THE DIRECTOR:</u> (1) DUKE'S CANOE CLUB (2) FOODLAND PRINCEVILLE (3) KAUAI MARRIOTT RESORT (4) THE LANAI BAR AND RESTAURANT (5) PRINCEVILLE WINE MARKET (6) ROB'S GOOD TIMES GRILL (7) KAUAI VETERANS MUSEUM (8) HANAMAULU HILLSIDERS SENIOR SOFTBALL TEAM (9) KAUAI PANIOLO RODEO ASSOCIATION (10) CATHOLIC CHARITIES HAWAII</p>	

	<p>(11) MARK'S PLACE</p> <p>e) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Pacheco moved to receive Items 1(a) through (f). Mr. Gibson seconded the motion. Motion carried 6:0.</p>
2.	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p><u>HANAI KAUAI, INC.:</u> Removal of Collin Darrell as President; Addition of Adam Watten as President, Lyle Cady as Vice President, Lindyl Lanham as Treasurer, and Cindy Griffin as Secretary.</p>	<p>Mr. Pacheco moved to accept the change in corporate officers. Mr. Gibson seconded the motion. Motion carried 6:0.</p>
3.	<p><u>REQUEST FOR ALCOHOL PURCHASE PERMIT:</u></p> <p><u>GLOBAL ALGAE INNOVATIONS:</u> Request for permit to purchase ethyl alcohol.</p>	<p>Mr. Pacheco moved to approve the request for alcohol purchase permit. Mr. Gibson seconded the motion. Motion carried 6:0.</p>
4.	<p><u>REQUEST FOR WAIVER OF RULE:</u></p> <p><u>KAUAI BEER COMPANY:</u> Pursuant to Rule 7.4(f) of the Rules and Regulations of the Liquor Commission of the County of Kauai, Kauai Brewers LLC dba Kauai Beer Company is requesting a waiver of Rule 7.4(e) Condition of Premises.</p> <p>Mr. Jim Guerber, owner, was present along with Ms. Lorna Nishimitsu, counsel.</p> <p>Ms. Nishimitsu explained that there is a Liquor Commission rule that prohibits entrances, windows, and/or other openings connecting a licensed premises to an unlicensed premises. She is unclear on what kind of harm would be prevented by this rule, but the Director had explained it was to prevent customers from taking alcohol from the licensed area into the unlicensed area. She distributed a diagram, and explained that the two areas</p>	

were two buildings side by side on two separate lots. When the doorway was put in place the licensee was informed of a building violation because the doorway connected a building of a certain class with a building of a different class. The licensee went ahead with consolidating the lots, resulting in it being one lot of record; however, this action did not alleviate the violation. Mr. Guerber then learned that according to Liquor Commission rules, he could not have a doorway connecting licensed and unlicensed areas. Ms. Nishimitsu stated that there is controlled access as the doorway is between the brewery and the storeroom, and is only for employee use to access the refrigerators and kitchen storage area. Ms. Nishimitsu stated that it was suggested by the Liquor Investigator that staff leave the premises through the main entrance, walk down the sidewalk to the next building, and then carry the food back into the licensed space that houses the kitchen; she feels that does not provide customers with an ideal dining/drinking experience to see raw meat and produce go past the tables.

Ms. Nishimitsu stated Mr. Guerber has been working with the Building Division to try and resolve the issue by attempting to disconnect part of the unlicensed building, and turn it into an open courtyard. She stated that Doug Haigh of the Building Division informed her that the small portion of the unlicensed area that would remain a closed storage space needed to be examined by the Fire Department to determine whether or not it creates a fire hazard. She explained that food products that cannot be stored in the small kitchen is what is being proposed to be stored in that space. Ms. Nishimitsu stated that Mr. Guerber is trying to satisfy both the Building Division and the Liquor Control Commission, but he has been having difficulty in taking those steps, which is the reason he is requesting the waiver.

Ms. Nishimitsu suggested the possibility of adding a keyless entry to that doorway which would require staff to enter a security code to enter/exit the unlicensed food storage area. The customers have no interest in entering

	<p>into the food storage area. Currently, the door is blocked by a three-door refrigerator. Another refrigerator has been moved into the “Wave Room” for now, which she feels detracts from the customer experience.</p> <p>Ms. Nishimitsu stated in looking at the harms that the Liquor Commission exercises control over, they are not talking about improper service, failure to pay fees, etc. She pointed out that this particular rule specifically allows for a waiver at the discretion of the Commission. Ms. Nishimitsu stated the master plan is to eventually demolish that unlicensed building once the current tenant has vacated.</p> <p>Commissioner Akita asked whether the rule allows for a waiver to which Deputy Attorney Courson explained that Rule 7.4(f) states that the Commission may waive Rule 7.4(e) Condition of Premises for good cause, and a request for waiver shall be in writing, and specifically state why an exception to this rule is justified. Rule 7.4(e) Condition of Premises states that no licensee that is authorized for on-premise consumption shall have an opening, transparent window, or entrance from within the licensed premise to any other enclosed unlicensed part of the same structure, or into any adjoining or enclosed unlicensed structure.</p> <p>Commissioner Matsunaga asked that assuming the licensee is granted a waiver by the Liquor Commission, will that then result in compliance with the Building Division’s rules, or will the licensee still be in violation of the Building Division’s rules. Ms. Nishimitsu stated she was unable to get a clear answer when she called, but her interpretation is that the doorway will no longer connect to another structure, and will be considered an exit doorway from the licensee’s premises once the partial demolition is complete. She is unsure whether that would then still be considered two connected buildings, noting that while they would still be connected at a point to the rear of the structure, the rest of the area will be an open courtyard.</p>	
--	--	--

	<p>Commissioner Matsunaga stated that the Commission is in a very awkward position because should they grant the waiver to the rule, the licensee may still be in violation of the Building Division's rules. Ms. Nishimitsu stated that Director Rapozo did explain to her that a Building violation constitutes a Liquor violation, but she was unable to find that provision in the Statutes. She is unsure the Liquor Commission can properly deny the waiver based on the Building Division violation; the licensee will still have to address any Building violations that remain.</p> <p>Commissioner Matsunaga pointed out that as Ms. Nishimitsu just stated, a Building violation would constitute a Liquor violation to which Ms. Nishimitsu replied she was unable to find any provision that states that in the statutes. Attorney Courson cited HRS 281-38 Conditions of Licenses which states <i>every license issued under this chapter shall contain the condition that it is subject to this chapter and any other laws applicable to the business of the licensee, whether in existence at the time of issue of such license or enacted or amended from time to time thereafter, and to all applicable rules and regulations of the liquor commission as the same may exist or be adopted or changed from time to time.</i> He noted that the Liquor Department interprets that to mean a licensee must be in compliance with all other department's rules and regulations.</p> <p>Commissioner Matsunaga reiterated that the Commission is in a tight spot, and questioned whether it would be more proper for the licensee to resolve the issues with the Building Department first, then come back to the Liquor Commission. Ms. Nishimitsu replied that there is a pending violation before the Commission, and the request by the department for revocation, suspension or fine of the licensee, and asked if that could be put on hold until the licensee can resolve the issues with Building.</p> <p>Attorney Courson explained that waivers are granted prospectively, and should this request for a waiver be granted, it would not have any bearing</p>	
--	---	--

	<p>on the violation that has already occurred. Ms. Nishimitsu stated the licensee is prepared to pay a fine for the violation, but questioned whether the fine would be from the day the doorway was created until present; the violation notice is not clear on what the parameters of the fine are. Attorney Courson stated it is one violation for the day the licensee was cited. Director Rapozo reminded the licensee and the Commission that this would be addressed at the upcoming violation hearing. Commissioner Matsunaga added for clarification that even if the Commission grants the waiver, it would not absolve the licensee of the offense that was committed prior.</p> <p>Commissioner Akita stated that the licensee is talking about the violation hearing, for which they admit the doorway does exist, and was not approved by the Liquor Commission. The other issue is that the licensee has a current issue with the Building Division that would prevent the Liquor Commission from taking any action in favor of the licensee. She asked to clarify whether the Commission needs to take care of the violation first.</p> <p>Attorney Courson stated it could be done in either order; the waiver and the violation have no direct bearing on the other; they are two separate items. He noted that the Department had preferred to complete the Violation Hearing first as they felt it would have made more sense, but the licensee's counsel asked to address the request for waiver first, which the Department did as a courtesy.</p> <p>At the request of the Commission, Doug Haigh of the Building Division was present.</p> <p>Commissioner Kusaka asked to clarify that the licensee does have a violation of a Building Division condition to which Mr. Haigh explained the Building Division issued a violation two years ago. The licensee picked up two building permits on Friday, and if they complete the work listed on the building permits, the violations will be cleared up. Mr. Haigh explained</p>	
--	--	--

that since the licensee has now demolished the section of the building that covered the doorway in question, it no longer leads into an enclosed building; it now leads to an exterior space. The original plan was to block up the door, but the architect has amended the plans to leave the door in place; that combined with the demolition permit will erase the violation of having that doorway in place. Mr. Haigh noted there are a couple of other issues with the building, but they have not yet been able to complete an inspection of the building, so it is possible the licensee has done everything required in that building permit. He does not think the demolition is complete yet, and noted a potential issue with an enclosed storage area that the licensee is considering not demolishing right away. Building has to coordinate with the Fire Department to see if there are any issues with what is being stored in that storage area. Because it's an existing building, it is primarily regulated by the Fire Department. Mr. Haigh pointed out that the current plans show that storage space to be demolished, and if the licensee follows through with that, there will be no problems with Building. They are hoping to complete an inspection in the following week.

Commissioner Kusaka asked whether it would be appropriate for the Commission to hold off on making a decision for another two week to allow licensee time to resolve his issues with the Building Division, and ensure there is no violation still existing. Attorney Courson stated the item could be deferred, and pointed out that even if the licensee becomes compliant with the building code, that does not mean an automatic approval from the Liquor Commission. The request for waiver of the rule would still have to be presented to the Commission for decision making. Once the licensee has resolved all the issues with the Building Division, they could either come back to request the waiver, or they could apply for a permanent increase of premise; either way, the main obstacle for the Liquor Commission was the violation of the building code.

	<p>Director Rapozo stated for example that if the licensee is compliant with the Building Division within two weeks, the Commission can forego the waiver and the licensee can request a permanent increase of premises to be approved they the Commission.</p> <p>In response to Commissioner Akita, Attorney Courson explained that the violation that was issued by the Liquor Department still stands as it occurred prior to the licensee submitting the request for waiver of the rule. The violation is a completely separate issue, and must be dealt with separately.</p> <p>Mr. Haigh noted that if the Commission is going to increase the area of the liquor licensed premises, it should be noted that it would require another building permit to review the use of the building, as it would change the potential use of the building in that area. That request has not come to the Building Division at the present time. Ms. Nishimitsu added that the licensee could not put that building permit request until they are ready to construct the new space. Attorney Courson suggested the licensee keep the space unlicensed for now, and while they will not be able to seat patrons there, they will be able to use the space in a way that supports their business. This is likely the reason the licensee is requesting the waiver for now. He explained that the Department's position is that the waiver should not be granted until the building code issues are cleared up.</p> <p>Commissioner Gibson asked whether the Commission could consider an interim expansion of the premises since the building is being torn down to which Mr. Haigh replied part of the building is being torn down. The Building Division has an issue with the delayed demolition of a storage room, and whether what is being stored there is covered by the existing building use, or whether there needs to be a change to the building use. The Fire Department regulates existing use, and will need to make the call on that existing storage space. Mr. Haigh stated that the plans show the storage room being demolished, but the licensee has expressed interest in keeping</p>	
--	---	--

	the storage room in tact in the interim until everything is in place to replace the entire building.	Ms. Kusaka moved to defer the request for waiver of rule to the June 22, 2017 meeting. Mr. Gibson seconded the motion. Motion carried 6:0.
Violation Hearing	<p><u>KAUAI BEER COMPANY</u>: Violation of Rule 7.4(e) Condition of Premises.</p> <p>Mr. Jim Guerber, owner, was present along with Ms. Lorna Nishimitsu, counsel. The licensee admitted to the charges.</p> <p>Mr. Guerber explained the doorway has been in existence for quite some time, and the area it leads to is used for storage and refrigeration. This is what is going to remain in that storage room. He stated he did not realize he was in violation on any rule when they installed the doorway, and he attempted to resolve the issue in 2015 by asking the Commission for an increase of premises, which was denied because of the existing issues with the Building Division. Mr. Guerber explained what he has been working on to try and resolve his violation with the Building Division as had been previously discussed at length during the Request for Waiver of Rule.</p> <p>Commissioner Matsunaga noted that the licensee stated the doorway had been in existence for a long period of time; however, the request for waiver states it was not a pre-existing doorway, and had been installed by the licensee. Mr. Guerber replied that he had installed the doorway in 2013 and did not think he needed a permit since it is an interior door and is not structural.</p> <p>The violation hearing was closed.</p>	<p>Mr. Pacheco moved that a fine of \$250 be imposed. Mr. Matsunaga seconded the motion. Motion carried 6:0.</p>
Announcements	Next Scheduled Meeting: Thursday, June 22, 2017 – 4:00 pm, Mo‘ikeha Building, Meeting Room #3.	

Adjournment		Chair Iida adjourned the meeting at 4:47 p.m.
--------------------	--	---

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
Jean Iida, Chair